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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

IN RE: INCRETIN MIMETICS
PRODUCTS LIABILITY
LITIGATION

Case No. 13-md-2452-AJB-MDD

As to all related and member cases

**JOINT MOTION TO ENTER A CASE
MANAGEMENT ORDER
GOVERNING *IN EXTREMIS*
DEPOSITIONS**

Lead Counsel for Plaintiffs and Defendants jointly move for entry of a Case Management Order governing the procedure for taking *in extremis* depositions. In support of this motion, the parties state as follows:

1. On October 18, 2013, the Court ordered the parties to “come to an agreement with regards to taking *in extremis* depositions” and submit such an agreement “as a joint motion with an attached proposed order.” Doc. No. 143, ¶ 6.

2. The parties have reached an agreement, which is memorialized in the proposed order attached hereto as Exhibit A. The parties agree that the order will serve the purposes of creating a just and efficient system for the taking of *in extremis* depositions in these proceedings.

Accordingly, Lead Counsel for Plaintiffs and Defendants respectfully request that the Court grant this joint motion and enter the proposed order.

Dated: October 28, 2013

By: /s/ Vickie E. Turner

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11 * Counsel for Defendant Merck Sharp & Dohme Corp., Vickie E. Turner, certifies
12 that, pursuant to Section 2.f.4 of the Court's CM/ECF Administrative Policies,
13 counsel for Defendants' Steering Committee and Plaintiffs' Co-Lead Counsel, have
14 reviewed the contents of this Joint Motion to Enter a Case Management Order
15 Governing *In Extremis* Depositions and authorized placement of their electronic
16 signatures on this document.
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EXHIBIT A

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11 UNITED STATES DISTRICT COURT
12 SOUTHERN DISTRICT OF CALIFORNIA
13

14 IN RE: INCRETIN MIMETICS
15 PRODUCTS LIABILITY
16 LITIGATION

Case No. 13-md-2452-AJB-MDD

As to all related and member cases

(PROPOSED) CASE MANAGEMENT
ORDER NO. ____

17 PROTOCOL FOR *IN EXTREMIS*
18 DEPOSITIONS
19

20 This Case Management Order in this MDL proceeding shall be binding on all
21 parties and their counsel involved in this MDL, including any case currently
22 consolidated in this proceeding and any case subsequently added to this proceeding.

23 1. This Order shall apply to all actions where it has been alleged that the
24 Plaintiff is "*In Extremis*".

25 2. "*In Extremis*" shall be defined as being reasonably near the end of life.

26 3. Plaintiffs' counsel shall give notice to Defendants' counsel of record upon
27 learning of a Plaintiff's *in extremis* condition for each case in which Plaintiff
28 voluntarily desires to utilize this protocol. The notice must be made in writing with a

1 certification by Plaintiffs' counsel as to the nature of the Plaintiff's *in extremis*
2 condition and his or her competency to testify. The notice also shall contain a
3 suggested date, time and location for the Plaintiff's *in extremis* deposition, which will
4 serve as the starting point for negotiations between counsels for the parties.

5 4. Provided that Plaintiffs' counsel provides the following materials to
6 counsel for the defendant(s), or has previously provided them, the deposition may
7 proceed on fourteen (14) days notice:

- 8 a. A completed Plaintiff Fact Sheet, including signed authorization
9 forms as required by Judge Battaglia's Order of June 17, 2013 in
10 the cases consolidated in the Southern District of California prior
11 to the establishment of the MDL, or subsequent order entered in
12 the MDL;
- 13 b. The records of any healthcare provider (HCP) who prescribed the
14 medication(s) at issue;
- 15 c. The records of the plaintiff's Primary Care Physician;
- 16 d. The records of the HCPs who (i) diagnosed the plaintiff with
17 diabetes; (ii) diagnosed the plaintiff with pancreatic cancer; and
18 (iii) currently treat the plaintiff for pancreatic cancer; and
- 19 e. Pharmacy records for all pharmacies required to be identified in
20 the PFS.

21 5. In the event the records and materials set forth in paragraph 4 above have
22 not been provided, Plaintiff's Counsel and Defendants' counsel shall cooperate to
23 obtain them as expeditiously as possible, and upon such records being obtained the
24 deposition may proceed on fourteen (14) days notice. If the records cannot be
25 obtained before the Plaintiff may become physically unable or incompetent to testify,
26 Plaintiff's Counsel shall notify Defendant's Counsel and the parties shall meet and
27 confer on the scheduling of the deposition. If the parties cannot agree, the matter shall
28 be presented to the Honorable Magistrate Judge Dembin.

1 6. The parties shall meet and confer in good faith to confirm the date, time,
2 and location of the Plaintiff's deposition. Plaintiff's counsel shall be responsible for
3 securing and providing a court reporter and, if desired, a videographer for the
4 deposition.

5 7. Defendants may elect to conduct a discovery deposition of the Plaintiff in
6 advance of the Plaintiff's *in extremis* evidence deposition. Upon request of
7 Defendants' counsel of record, or their delegate, the parties shall meet and confer to
8 set an agreed date, time and location for the deposition. Defendants' counsel shall be
9 responsible for securing and providing a court reporter and, if desired, a videographer
10 for the discovery deposition.

11 8. If Plaintiff's counsel follows the procedures set forth in this Case
12 Management Order, Plaintiff's counsel need not notice an emergency hearing in order
13 to proceed with a Plaintiff's *in extremis* deposition. Should Defendants have a good
14 faith objection to the deposition, however, they shall notify Plaintiff's counsel and the
15 Court, in writing, of their objection and notice an emergency motion to quash the *in*
16 *extremis* deposition for hearing by the Honorable Magistrate Judge Dembin.
17 Similarly, should Plaintiff's counsel have a good faith objection to the Defendants'
18 notice of Plaintiff's discovery deposition, they shall notify Defendants' counsel of
19 record and the Court, in writing, of their objection and notice an emergency notice to
20 quash the deposition for hearing by the Honorable Magistrate Judge Dembin.

21 9. Any objections discussed in paragraph 8 shall be brought to the Court's
22 attention as soon as practicable, but, in any event, no less than two (2) days before the
23 Plaintiff's deposition is noticed to proceed. If the objection(s) are overruled, the
24 deposition shall proceed at the date, time, and location at which it initially was
25 noticed.

26 10. This Order does not itself create an obligation for any Plaintiff to proceed
27 with an *in extremis* deposition. Any Plaintiff's decision not to utilize this protocol
28 shall not act to prejudice that Plaintiff in any subsequent proceedings.

1 11. The parties hereby further agree that this protocol will be applicable pre-
2 suit and may be used to initiate depositions before an action has been filed, so long as
3 a complaint is filed before the deposition proceeds.

4 12. The parties agree that to the extent this protocol is inconsistent with any
5 requirements of Rule 27 regarding petitions, notice, etc., that no motion will be made
6 by either party to limit the deposition testimony in any way on that basis so long as the
7 request is consistent with this protocol.

8 13. This Order does not preclude the Defendants from seeking other and
9 further discovery from the Plaintiff, including additional deposition testimony.

10 IT IS SO ORDERED.

11
12 DATED: _____

Honorable Mitchell D. Dembin
United States Magistrate Judge